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based on future transactions or renewals that the bank reasonably anticipates will occur.

[61 FR 66560, Dec. 18, 1996, as amended at 66 FR 34792, July 2, 2001]

§ 23.22 Transition rule.

(a) *Exclusion.* A Section 24(Seventh) Lease entered into prior to June 12, 1979, may continue to be administered in accordance with the lease terms in effect as of that date. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.6, however, a national bank that enters into a new extension of credit to a customer, including a lease, on or after June 12, 1979, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a Section 24(Seventh) Lease that was entered into prior to June 12, 1979, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the Section 24(Seventh) Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith, and demonstrates by appropriate documentation, that renewal of the lease is necessary to avoid financial loss and to recover its investment in, and its cost of financing, the leased property.

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

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APPENDIX 1 TO PART 24—CD-1–NATIONAL BANK COMMUNITY DEVELOPMENT (PART 24) INVESTMENTS

AUTHORITY: 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

SOURCE: 61 FR 49660, Sept. 23, 1996, unless otherwise noted.

§ 24.1 Authority, purpose, and OMB control number.

(a) *Authority:* The Office of the Comptroller of the Currency (OCC) issues this part pursuant to its authority under 12 U.S.C. 24(Eleventh), 93a, and 481.

(b) *Purpose.* This part implements 12 U.S.C. 24(Eleventh), which authorizes national banks to make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income areas or individuals, such as by providing housing, services, or jobs. It is the OCC's policy to encourage national banks to make investments described in § 24.3, consistent with safety and soundness. The OCC believes that national banks can promote the public welfare through a variety of investments, including those in community and economic development entity (CEDEs) and community development projects (CD Projects) that develop affordable housing, foster revitalization or stabilization of low- and moderate-income areas or other areas targeted for redevelopment by local, state, tribal or Federal government, or provide equity or debt financing for small businesses that are located in such areas or that produce or retain permanent jobs for low- and moderate-income persons. This part provides:

(1) The standards that the OCC uses to determine whether an investment is designed primarily to promote the public welfare; and

(2) The procedures that apply to these investments.

(c) *OMB control number.* The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557–0194.

(d) National banks that make loans or investments that are designed primarily to promote the public welfare

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and that are authorized under provisions of the banking laws other than 12 U.S.C. 24(Eleventh), may do so without regard to the provisions of 12 U.S.C. 24(Eleventh) or this part.

[61 FR 49660, Sept. 23, 1996, as amended at 64 FR 70990, Dec. 20, 1999; 68 FR 48775, Aug. 15, 2003]

§ 24.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Adequately capitalized* has the same meaning as adequately capitalized in 12 CFR 6.4.

(b) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards set out in Appendix A to 12 CFR part 3 as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under Appendix A to 12 CFR part 3, as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161.

(c) *Community and economic development entity* (CEDE) means an entity that makes investments or conducts activities that primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or would receive consideration as "qualified investments" under 12 CFR 25.23. The following is a non-exclusive list of examples of the types of entities that may be CEDEs:

(1) National bank community development corporation subsidiaries;

(2) Private or nonbank community development corporations;

(3) CDFI Fund-certified Community Development Financial Institutions or Community Development Entities;

(4) Limited liability companies or limited partnerships;

(5) Community development loan funds or lending consortia;

(6) Community development real estate investment trusts;

(7) Business development companies;

(8) Community development closed-end mutual funds;

(9) Non-diversified closed-end investment companies; and

(10) Community development venture or equity capital funds.

(d) *Community development Project (CD Project)* means a project to make an investment that meets the requirements of § 24.3.

(e) *Eligible bank* means, for purposes of § 24.5, a national bank that:

(1) Is well capitalized;

(2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System;

(3) Has a Community Reinvestment Act (CRA) rating of "Outstanding" or "Satisfactory"; and

(4) Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive (see 12 CFR part 6, subpart B) or, if subject to any such order, agreement or directive, is informed in writing by the OCC that the bank may be treated as an "eligible bank" for purposes of this part.

(f) *Low-income and moderate-income* have the same meanings as "low-income" and "moderate-income" in 12 CFR 25.12(n).

(g) *Significant risk to the deposit insurance fund* means a substantial probability that any Federal deposit insurance fund could suffer a loss.

(h) *Small business* means a business, including a small farm or minority-owned small business, that meets the qualifications for Small Business Administration Development Company or Small Business Investment Company loan programs in 13 CFR 121.301.

(i) *Well capitalized* has the same meaning as well capitalized in 12 CFR 6.4.

[61 FR 49660, Sept. 23, 1996, as amended at 68 FR 48775, Aug. 15, 2003]

§ 24.3 Public welfare investments.

A national bank may make an investment under this part if the investment primarily benefits low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or the investment

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would receive consideration under 12 CFR 25.23 as a “qualified investment.”

[68 FR 48776, Aug. 15, 2003]

§ 24.4 Investment limits.

(a) *Limits on aggregate outstanding investments.* A national bank’s aggregate outstanding investments under this part may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the OCC determines, by written approval of the bank’s proposed investment pursuant to § 24.5(b), that a higher amount will pose no significant risk to the deposit insurance fund. In no case may a bank’s aggregate outstanding investments under this part exceed 10 percent of its capital and surplus. When calculating the aggregate amount of its aggregate outstanding investments under this part, a national bank should follow generally accepted accounting principles, unless otherwise directed or permitted in writing by the OCC for prudential or safety and soundness reasons.

(b) *Limited liability.* A national bank may not make an investment under this part that would expose the bank to unlimited liability.

[61 FR 49660, Sept. 23, 1996, as amended at 64 FR 70991, Dec. 20, 1999; 68 FR 48776, Aug. 15, 2003]

§ 24.5 Public welfare investment after-the-fact notice and prior approval procedures.

(a) *After-the-fact notice of public welfare investments.* (1) Subject to § 24.4(a), an eligible bank may make an investment authorized by 12 U.S.C. 24 (Eleventh) and this part without prior notification to, or approval by, the OCC if the bank follows the after-the-fact notice procedures described in this section.

(2) An eligible bank shall provide an after-the-fact notification of an investment, within 10 working days after it makes the investment, to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(3) The bank’s after-the-fact-notice must include:

(i) A description of the bank’s investment;

(ii) The amount of the investment;

(iii) The percentage of the bank’s capital and surplus represented by the investment that is the subject of the notice and by the bank’s aggregate outstanding public welfare investments and commitments, including the investment that is the subject of the notice; and

(iv) A statement certifying that the investment complies with the requirements of §§ 24.3 and 24.4.

(4) A bank may satisfy the notice requirements of paragraph (3) of this section by completing form CD-1, attached as Appendix 1 to this part.

(5) A national bank that is not an eligible bank but that is at least adequately capitalized, and has a composite rating of at least 3 with improving trends under the Uniform Financial Institutions Rating System, may submit a letter to the Community Development Division requesting authority to submit after-the-fact notices of its investments. The Community Development Division considers these requests on a case-by-case basis.

(6) Notwithstanding the provisions of this section, a bank may not submit an after-the-fact notice of an investment if:

(i) The investment involves properties carried on the bank’s books as “other real estate owned”; or

(ii) The OCC determines, in published guidance, that the investment is inappropriate for after-the-fact notice.

(b) *Investments requiring prior approval.* (1) If a national bank does not meet the requirements for after-the-fact investment notification set forth in this part, the bank must submit an investment proposal to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219. The bank may use form CD-1, attached to this part as Appendix 1, to satisfy this requirement.

(2) The bank’s investment proposal must include:

(i) A description of the bank’s investment;

(ii) The amount of the investment;

(iii) The percentage of the bank’s capital and surplus represented by the proposed investment and by the bank’s aggregate outstanding public welfare

investments and commitments, including the proposed investment; and

(iv) A statement certifying that the investment complies with the requirements of §§ 24.3 and 24.4.

(3) In reviewing a proposal, the OCC considers the following factors and other available information:

(i) Whether the investment satisfies the requirements of § 24.3 and § 24.4;

(ii) Whether the investment is consistent with the safe and sound operation of the bank; and

(iii) Whether the investment is consistent with the requirements of this part and the OCC's policies.

(4) Unless otherwise notified in writing by the OCC, and subject to § 24.4(a), the proposed investment is deemed approved after 30 calendar days from the date on which the OCC receives the bank's investment proposal.

(5) The OCC, by notifying the bank, may extend its period for reviewing the investment proposal. If so notified, the bank may make the investment only with the OCC's written approval.

(6) The OCC may impose one or more conditions in connection with its approval of an investment under this part. All approvals are subject to the condition that a national bank must conduct the approved activity in a manner consistent with any published guidance issued by the OCC regarding the activity.

[61 FR 49660, Sept. 23, 1996, as amended at 64 FR 70991, Dec. 20, 1999; 68 FR 48776, Aug. 15, 2003]

§ 24.6 Examples of qualifying public welfare investments.

Investments that primarily support the following types of activities are examples of investments that meet the requirements of § 24.3:

(a) Affordable housing activities, including:

(1) Investments in an entity that finances, acquires, develops, rehabilitates, manages, sells, or rents housing primarily for low- and moderate-income individuals;

(2) Investments in a project that develops or operates transitional housing for the homeless;

(3) Investments in a project that develops or operates special needs hous-

ing for disabled or elderly low- and moderate-income individuals; and

(4) Investments in a project that qualifies for the Federal low-income housing tax credit;

(b) Economic development and job creation investments, including:

(1) Investments that finance small businesses (including equity or debt financing and investments in an entity that provides loan guarantees) that are located in low- and moderate-income areas or other targeted redevelopment areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments that finance small businesses or small farms that, although not located in low- and moderate-income areas or targeted redevelopment areas, create a significant number of permanent jobs for low- or moderate-income individuals;

(3) Investments in an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a low- and moderate-income area or targeted redevelopment area and occupied primarily by small businesses, or that is occupied primarily by small businesses that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals; and

(4) Investments in low- and moderate-income areas or targeted redevelopment areas that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(c) Investments in CEDEs, including:

(1) Investments in a national bank that has been approved by the OCC as a national bank with a community development focus;

(2) Investments in a community development financial institution, as defined in 12 U.S.C. 4742(5);

(3) Investments in a CEDE that is eligible to receive New Markets tax credits under 26 U.S.C. 45D; and

(d) Other public welfare investments, including:

(1) Investments that provide credit counseling, job training, community development research, and similar technical assistance services for non-

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profit community development organizations, low- and moderate-income individuals or areas or targeted redevelopment areas, or small businesses located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments of a type approved by the Federal Reserve Board under 12 CFR 208.22 for state member banks that are consistent with the requirements of § 24.3; and

(3) Investments of a type previously determined by the OCC to be permissible under this part.

[68 FR 48776, Aug. 15, 2003]

§ 24.7 Examination, records, and remedial action.

(a) *Examination.* National bank investments under this part are subject


to the examination provisions of 12 U.S.C. 481.

(b) *Records.* Each national bank shall maintain in its files information adequate to demonstrate that its investments meet the standards set out in § 24.3 of this part, including, where applicable, the criteria of 12 C.F.R. 25.23, and that the bank is otherwise in compliance with the requirements of this part.

(c) *Remedial action.* If the OCC finds that an investment under this part is in violation of law or regulation, is inconsistent with the safe and sound operation of the bank, or poses a significant risk to a Federal deposit insurance fund, the national bank shall take appropriate remedial action as determined by the OCC.

[61 FR 49660, Sept. 23, 1996, as amended at 68 FR 48777, Aug. 15, 2003]

APPENDIX 1 TO PART 24—CD-1—NATIONAL BANK COMMUNITY DEVELOPMENT (PART 24)
INVESTMENTS

 Comptroller of the Currency Administrator of National Banks	CD-1 – National Bank Community Development (Part 24) Investments	For Official Use Only
		OMB Number 1557-0194

National banks may make investments designed primarily to promote the public welfare under the community development investment authority in 12 USC 24(Eleventh) and its implementing regulation, 12 CFR 24 (Part 24). Part 24 contains the OCC guidelines to determine whether an investment is designed primarily to promote the public welfare and procedures that apply to those investments. National banks must submit the completed form to provide an after-the-fact notice or to request prior approval of a public welfare investment to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219. Please contact the Community Development Division at (202) 874-4930 for more information.

PLEASE PROVIDE THE FOLLOWING INFORMATION ABOUT THE INVESTING BANK.

Bank name:	Mailing address (<i>street or P.O. box</i>):
Bank charter number:	City, State, ZIP Code:
Telephone number:	Fax number:
E-mail address:	URL:

CONTACT FOR INFORMATION:

Name of bank contact responsible for form's information:	Name of bank contact responsible for CD investment (if different):
Mailing address (<i>street or P.O. box</i>):	Mailing address (<i>street or P.O. box</i>):
City, State, ZIP Code:	City, State, ZIP Code:
Telephone number:	Telephone number:
Fax number:	Fax number:
E-mail address:	E-mail address:

PLEASE INDICATE THE PROCESS THE BANK REQUESTS BY CHECKING THE APPROPRIATE BOX, BELOW.After-the-fact notice (12 CFR 24.5(a)) - complete sections 1 and 2. ☐Prior approval (12 CFR 24.5(b)) - complete section 2. ☐

Section 1 – After-The-Fact Notice Only (12 CFR 24.5(a))

A bank may provide an after-the-fact notice of its Part 24 investment if the bank responds affirmatively to all of the following requirements.

The bank is “well-capitalized,” as defined in 12 CFR 6.4(b)(1).

Yes ☐ No ☐

The bank has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System.

Yes ☐ No ☐

The bank's most recent Community Reinvestment Act rating is satisfactory or outstanding.

Yes ☐ No ☐

The bank is not under a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive.

Yes ☐ No ☐

Including this investment, the bank's aggregate outstanding investments and commitments under Part 24 are less than 5 percent of its capital and surplus, unless the OCC has provided written approval allowing the bank to provide after-the-fact notices for investments that would raise the aggregate amount of the bank's Part 24 investments beyond 5 percent of its capital and surplus.

Yes ☐ No ☐

The investment does not involve properties carried on the bank's books as “other real estate owned.”

Yes ☐ No ☐

The OCC has not determined, in published guidance, that the investment is inappropriate for the after-the-fact notification.

Yes ☐ No ☐

Has the bank responded affirmatively to all of the above requirements in order to provide an after-the-fact notice of its Part 24 investment? [The OCC may have provided written notification that the bank may submit Part 24 after-the-fact notices. If so, please provide the date or a copy of the OCC's written notification.]

Yes ☐ (The bank may make an investment authorized by 12 USC 24(Eleventh) and this part and notify the OCC within 10 working days by submitting a completed after-the-fact notice.)

No ☐ (The bank must seek prior OCC approval of its investment and submit a completed investment proposal before making the investment.)

(To complete the after-the-fact notice process or to request prior OCC approval, please proceed to section 2 of this form.)

Section 2 — All Requests

1. Please indicate how the bank's investment is consistent with Part 24 requirements for public welfare investments, under 12 CFR 24.3.

- a. Check at least one of the following that applies to the bank's investment:

The investment primarily benefits low- and moderate-income individuals. ☐

The investment primarily benefits low- and moderate-income areas. ☐

The investment primarily benefits areas targeted for redevelopment by a government entity. ☐

The investment is a "qualified investment" under 12 CFR 25.23 for purposes of the Community Reinvestment Act. ☐

2. Please indicate how the bank's investment is consistent with Part 24 requirements for investment limits under 12 CFR 24.4 by responding to the following questions.

- a. Dollar amount of the bank's investment that is the subject of this submission: _____.
- b. Percentage of the bank's capital and surplus represented by the bank's investment that is the subject of this submission. _____%.
- c. Percentage of the bank's capital and surplus represented by the aggregate outstanding Part 24 investments and commitments, including this investment: _____%.
- d. Does this investment expose the bank to unlimited liability?
- Yes ☐ (This investment cannot be made under Part 24.)
- No ☐

3. Please attach a brief description of the bank's investment. (See 12 CFR 24.5(a)(3)(i) and (b)(2)(i)). Include the following information in the description.

- a. The name of the community and economic development entity (CEDE) into which the bank's investment has been (or will be) made.
- b. The type of bank investment (equity, debt, or other).
- c. The activity or activities of the CEDE in which the bank has invested (or will invest). (See examples of investment activities described in 12 CFR 24.6 (a), (b), (c), and (d).)
- d. How the investment is structured so that it does not expose the bank to unlimited liability, such as by describing the structure of the CEDE (e.g., CDC subsidiary, multibank CDC, multi-investor CDC, limited partnership, limited liability company, community development bank, community development financial institution, community development entity, community development venture capital fund, community development lending consortia, community development closed-end mutual funds, non-diversified closed-end investment companies, or any other CEDE) and by providing any other relevant information.
- e. The geographic area served by the CEDE.
- f. The total funding or other support by community development partners involved in the project (e.g., government or public agencies, nonprofits, other investors), if known.

- g. Supplemental information (e.g., prospectus, annual report, web address that contains information about the CEDE in which the investment is or will be made), if available.

4. Evidence of qualification is readily available for examination purposes.

The bank maintains information concerning this investment in a form readily accessible and available for examination that supports the certifications contained in this form and demonstrates that the investment meets the standards set out in 12 CFR 24.3, including, where applicable, the criteria of 12 CFR 25.23.

Yes ☐ No ☐

5. Certification

The undersigned hereby certifies that the foregoing information in this form is accurate and complete. It is further certified that the undersigned is authorized to file this form on Part 24 investments for the bank.

Name: _____

Title: _____

Signature: _____

Date: _____

DESCRIPTION OF THE BANK'S CD INVESTMENT. (See information previously requested)

(Type the description of the bank's Part 24 investment here. You may type as much text as necessary. You will have access to all of MS Word's editing features.)